



Ninety-Ninth Legislature - First Session - 2005
Introducer's Statement of Intent
LB 533

Chairperson: Mick Mines
Committee: Banking, Commerce and Insurance
Date of Hearing: January 31, 2005

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 533 is an omnibus bill introduced at the request of the Nebraska Department of Banking and Finance. The bill addresses issues relating to the financial institutions and companies under the jurisdiction of the Department. Its primary purpose is to revise and update laws governing these entities. The following is a description of this proposed legislation and the reasons supporting the proposals.

Financial Institutions:

The laws relating to banks, savings and loan associations, credit unions, and trust companies would be amended as follows:

LB 533 would add exclusions from the unauthorized use of the word "bank" statute for out-of-state state-chartered banks and savings banks, bank holding companies, and certain mortgage bankers. Legislation is required because the law is very strict regarding the use of this term. All of the exceptions proposed are for regulated entities. These revisions add generally accepted uses of the word and will provide the Department with administrative flexibility.
[Section 1 amending Section 8-113.]

LB 533 would provide for a short form procedure if a bank wants to simultaneously swap its main office location with an existing branch location in Nebraska, and set a fee for the procedure. Current law requires the filing of two applications so this will simplify the process. [Sections 2, 4, 8, and 19 amending Sections 8-115.01, 8-120, 8-157, and 8-602.]

LB 533 would require banks and savings associations to have federal deposit insurance of accounts. There will be no impact on existing entities as currently all but one of these institutions have such insurance, and the bill proposes to grandfather the one existing uninsured savings and loan while continuing existing customer notice provisions regarding the lack of insurance. The bill contains corresponding amendments relating to the term "banking institution", a statutory cross-reference, and removal of duplicative language. [Sections 20 and 21 are the primary provisions amending Sections 8-701 and 8-702; Sections 3 and 23 are the corresponding sections amending Sections 8-116.01 and 8-2401, while Section 55 outright repeals Section 8-385. Harmonizing sections to the

outright repeal of Section 8-385 are Sections 9, 14, and 17 amending Sections 8-184.04, 8-305, and 8-331.]

LB 533 would add electronic transmission as an additional means by which the Department could give notice of pending applications. Each financial institution would be given the option of receiving these notices by e-mail or certified mail. Legislation is required because the statutes (applications relating to charters/branches for banks, s&ls, credit unions) require certified mailings. This proposal would improve efficiency by saving Department staff time, and could save money for the applicant financial institutions. [Sections 2, 8, 13, and 29, amending Sections 8-115.01, 8-157, 8-234 and 21-1725.01.]

LB 533 would authorize the Department to release pledged securities to a receiver for an insolvent out-of-state trust company upon the receipt of a court order and notice publication. Current law does not allow the Department to release the securities until all claims are paid, and this is affecting settlement of an existing receivership of a South Dakota trust company. The emergency clause is requested for this proposal. [Section 12, amending Section 8-213.]

LB 533 would provide for the annual renewal of the three “wild card” statutes. The laws provide parity between state-chartered financial institutions and their federal counterparts. This is the annual re-enactment necessary as a result of a state constitutional provision. The emergency clause is requested for these three provisions. [Sections 10, 18, and 31 amending Sections 8-1,140, 8-355, and 21-17,115.]

LB 533 would update a law relating to bank directors by removing outdated language requiring that bank directors be selected from among the bank’s shareholders. This statute was inadvertently not amended some years ago when a requirement which provided that a bank director own a share of stock of the bank or its holding company was repealed. [Section 5 amending Section 8-124.]

LB 533 would update the investment laws of financial institutions by including a cross-reference in each set of laws to current law authorizing the institutions to invest in business development corporations. In addition, the Nebraska Banking Act is updated with a second cross-reference to a bank’s current authority to invest in a subsidiary corporation. This proposal is simply for ease of reference. [Sections 7, 11, 16, and 30 amending Sections 8-148, 8-206, 8-320, and 21-17,102.]

LB 533 would update the laws which authorize minors to have deposit accounts at banks and savings associations to provide that electronic withdrawals from these accounts are acceptable. [Sections 6 and 15 amending Sections 8-135 and 8-318.]

LB 533 would adopt legislation prohibiting a person from using the name, trade name, logo, or symbol of a financial institution when the person solicits a loan customer of the financial institution unless it includes a statement that the person is not affiliated with the financial institution. In addition, the personal loan information of a customer in such solicitations can only be used if certain disclaimers are made. An exception is made for a financial institution doing comparative advertising or solicitations. The Department would be given cease and desist authority and fining authority against persons who violate a cease and desist order. This proposal would reduce customer confusion and the possibility of deception. [Sections 24 through 28 are the substantive provisions,

while Section 51 provides that those sections will be assigned as a separate article in Chapter 8 of the statutes.]

Sale of Check and Funds Transmission Act:

LB 533 would provide that licensees under this Act which opt to pledge securities to the Department in lieu of the required bond would pay the same fees as paid by trust companies and trust departments which pledge securities as part of their licensing process. This proposal will codify current Department practice. [Sections 19 and 22, amending Sections 8-602(11) and 8-1006.]

Mortgage Bankers:

The Nebraska Mortgage Banker Registration and Licensing Act would be amended as follows:

LB 533 would provide an exemption from licensing and registration for wholly-owned subsidiaries of all financial institutions. The effect of the proposal will be to provide parity between state and federally chartered institutions which currently are considered exempt as a result of federal pre-emption issues. [Section 35 amending Section 45-703.]

LB 533 would add a provision authorizing the Department to issue notices of expiration for registrations which have been surrendered. This proposal will promote efficiency by not requiring a revocation procedure. [Section 36 amending Section 45-704.]

LB 533 would prohibit licensees from using more than one trade name or doing business as (d/b/a) designation in Nebraska. This proposal is intended to reduce consumer confusion. [Section 37 amending Section 45-705.]

LB 533 would authorize the Department to impose an administrative fine or take other action in cases where a licensee employs or contracts with a person who has outstanding consumer complaints relating to his/her association with another licensee/registrant. The employing licensee will have to exercise reasonable care in its hiring/contracting process. This proposal will aid in preventing persons who do not respond to complaints from later working in the mortgage banking business. [Section 39 amending Section 45-707.]

LB 533 would require a licensee to report to the Department when it changes its name, trade name, d/b/a designation, address or opens or closes a Nebraska branch office. The information would be deemed material and would have to be reported within 30 days. [Section 40 amending Section 45-711.]

LB 533 would authorize an increase in fees as follows: The initial registration fee would increase from \$50 to \$200; the renewal registration fee would increase from \$50 to \$100; the initial licensing fee would increase from \$300 to \$400; and the renewal licensing fee would increase from \$100 to \$200. [Sections 36, 37, and 38 amending Sections 45-704, 45-705, and 45-706.]

Installment Loans:

The Nebraska Installment Loan Act would be amended as follows:

LB 533 would prohibit licensees from collecting loan origination fees on more than one loan made to a consumer within a twelve month period, except for that part of the loan which advances new money. This proposal would prevent repeated charging of fees for loans which are rolled over on a frequent basis. [Section 46 amending Section 45-1024(5).]

LB 533 would provide that loans in an amount greater than \$3,000.00 but less than \$25,000.00 may not be written for a term greater than 145 months unless the loan is for a mobile home. This will help prevent excessive charges on smaller loans. [Section 46 amending Section 45-1024(1).]

LB 533 would require a licensee to provide payoff information to a customer within 10 days of receipt of a request and authorize a fee when more than one request is made by that customer within sixty days. This proposal will assist consumers in getting timely responses to their requests and at the same time allow a reasonable fee for repeated requests. [Section 50 amending Section 45-1055.]

LB 533 would provide authority to the Department to impose administrative fines against licensees, their insiders, and others who violate the Act, and to provide that liability for fines continues even after termination of a license for acts committed prior to termination. This proposal will provide an additional remedy to the Department in its enforcement of the Act. [Sections 47 and 48 amending Sections 45-1032 and 45-1033, and Section 49 setting out a new statute.]

LB 533 would increase the initial license application fee from \$150 to \$500 and increase license renewal fee from \$100 to \$250. [Sections 43 and 45 amending Sections 45-1005 and 45-1013.]

Installment Sales

The Nebraska Installment Sales Act would be amended as follows:

LB 533 would provide that liability for administrative fines under the Act continues even after termination of a license for acts committed prior to termination. This proposal will prevent persons from surrendering a license in order to escape liability. [Section 34 amending Section 45-350.]

LB 533 would add provisions to clarify methods of termination of licenses and to allow the Department to issue notices of expiration and notices of cancellation of licenses. This will promote efficiency by not requiring revocation procedures. [Sections 32, 33, and 34 amending Sections 45-346, 45-348, and 45-350.]

Delayed Deposit Services Business Licensing Act

LB 533 would amend this Act by adding a fee of \$100 per branch for renewals of branch office authority. [Section 41 amending Section 45-910.]

Principal Introducer:

**Mick Mines, Chairperson
Committee on Banking, Commerce and Insurance**